

**Final Examination
Civil Procedure I
Professor Paul Kibel
Fall 2008**

1. You have **three (3) hours** to complete this exam.
2. This is a **closed** book exam. You may not consult any notes, books, or other materials, nor may you discuss the question among yourselves or with any other persons.
3. This exam consists of three parts (described below). It is recommended that you spend approximately 60 minutes (one hour) each for Part I, Part II and Part III.

Part I consists of one (1) essay and two (2) short-answer questions.

Part II consists of one (1) essay question.

Part III consists of one (1) essay question.

4. Please write your response in the blue books provided. Please write clearly. Write on every other line and every other page to permit instructor comments.
5. Write your exam number on your exam envelope. Put your correct class section and student exam # at the top of this page, each page of questions, each blue book, and the "ParSCORE TEST FORM." **Do not** use your name, student ID number or Social Security Number on any exam materials.
6. At the conclusion of the exam please return all test materials including blue books to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

GOOD LUCK

Part I: Recommended Time: 60 minutes**Part I (A): Recommended Time – 40 Minutes**

LUCKY PENNY MINING COMPANY (LUCKY PENNY) is in the business of mining and selling copper. LUCKY PENNY is incorporated under Delaware law and maintains its corporate headquarters in Denver, Colorado. LUCKY PENNY has two active copper mines – a larger copper mine (with more copper deposits and more miners) located in Wyoming, and a smaller mine (with less copper deposits and less miners) located in Colorado. The majority of LUCKY PENNY’s employees work in its two mines rather than at its headquarters.

JOHN HARDLUCK (HARDLUCK), a former employee of the company and a citizen of Colorado, files a lawsuit against LUCKY PENNY in Federal District Court in Denver, Colorado. In this lawsuit, HARDLUCK does not allege any claims arising under or involving federal statutory or federal Constitutional law. All of HARDLUCK’s claims involve alleged violations of Colorado state law on wrongful termination. Under Colorado state law, punitive damages can be awarded in cases of wrongful termination. In his lawsuit against LUCKY PENNY, HARDLUCK seeks \$60,000 in damages for lost wages and \$20,000 in punitive damages.

LUCKY PENNY has filed a motion to dismiss HARDLUCK’s lawsuit on the grounds that the Federal District Court lacks subject matter jurisdiction. You are a Law Clerk to the Federal District Court judge hearing this motion. Write a memorandum advising the Federal District Court as to how she should rule on LUCKY PENNY’s motion, explaining the legal and factual grounds that support your analysis and recommendation.

Part I (B): Recommended Time – 10 minutes

In regard to cases filed in Federal District Courts, under what particular circumstances would a defendant file a motion to dismiss based on *forum non conveniens* grounds rather than file a motion to change venue under Sections 1404 of the United States Code on the Judiciary and Judicial Procedure?

Part I (C): Recommended Time – 10 Minutes

For lawsuits filed in Federal District Court pursuant to federal question subject matter jurisdiction in which a plaintiff has also included state law claim against a defendant and in which the plaintiff’s state law claim is closely related (arises from the same common nucleus of facts) as the plaintiff’s federal law claim, identify the grounds upon which a Federal District Court Judge may nonetheless properly refuse to hear a plaintiff’s supplemental state law claim?

Part II: Recommended Time: 60 Minutes (1 hour)

REX is driving his car in downtown San Francisco while talking on his cell-phone. Distracted by his phone conversation and with only one hand on the steering wheel, REX drives into and kills BETH who is riding a bicycle. After learning that BETH died in the accident he caused, REX is so racked with guilt that he cannot live with himself and commits suicide.

Thirteen (13) months after REX commits suicide, BETH's daughter, BECKY, files a wrongful death diversity action against REX's probate estate in Federal District Court in San Francisco. REX was (and the executor of REX's estate is) a citizen of California. BETH was (and her daughter BECKY is) a citizen of the Oregon.

The California Probate Code contains the following provision: "When a person dies, any lawsuit filed against the estate of the deceased person based on the upon liability for the actions of said deceased person while alive must be filed against the deceased person's estate within one year (12 months) of the date the deceased person died." The preface to this provision in the California Probate Code states that the objective of this provision is to encourage prompt disbursement of estate assets to heirs and beneficiaries free from potential third-party claims.

There is no provision in the Federal Rules of Civil Procedures (FRCP) or any other federal statute that directly addresses the particular question of the time period in which a lawsuit can or must be brought against a deceased person's estate for liabilities based on the deceased person's actions while alive. Most federal court decisions that have considered the general question of the timeliness of lawsuits, however, have held that actions are timely unless there was "inexcusable delay" by the plaintiff in filing the action.

The executor of REX's estate has filed a motion to dismiss on the grounds that the lawsuit of BETH's daughter, BECKY, is barred because the action was filed after the one year (12 month) period set forth in the California Probate Code. BECKY has opposed this motion to dismiss on the grounds that the Federal District Court should apply the "inexcusable delay" standard rather than the California Probate Code provision.

You are the Federal District Court Judge hearing this motion to dismiss. Set forth your ruling and specify the legal grounds and facts that support your ruling.

Part III: Recommended Time – 60 Minutes (1 hour)

The FRUIT BASKET COMPANY (FRUIT BASKET) is based in San Francisco. FRUIT BASKET assembles baskets of assorted fruits and then ships these baskets to customers all over the United States, including a few customers in the state of Georgia.

ORCHARD FARMS (ORCHARD) is an apple farm in Sonoma County north of San Francisco. ORCHARD sells about 10% of its apples to FRUIT BASKET. From discussions with FRUIT BASKET, ORCHARD was told that FRUIT BASKET ships its baskets nationwide, including to a few customers in Georgia. ORCHARD does not know whether FRUIT BASKET's statement about shipments to Georgia are true, and ORCHARD does not know whether any FRUIT BASKET shipments to Georgia happen to contain any apples that ORCHARD grew.

GEORGE lives in Atlanta, Georgia, and orders a basket of assorted fruits from FRUIT BASKET that contains an apple grown by ORCHARD. The apple in the basket delivered to GEORGE contains high concentrations of toxic pesticides. Upon eating this apple, GEORGE suffers an acute response that requires emergency hospitalization and results in chronic and permanent neurological damage.

GEORGE files a negligence suit against FRUIT BASKET and ORCHARD in state trial court in Atlanta, Georgia.

ORCHARD does not do and has never done any advertising in Georgia, and has never sold any of its apples directly to any customers in Georgia. However, several years ago, an employee of ORCHARD attended a two-day Peach Growers Conference in Atlanta. At that point in time, ORCHARD was considering diversifying its farm to grow peaches as well as apples and attended the Peach Growers Conference to learn more about the peach sector. After its employee reported back from attending the Peach Growers Conference that the market for peaches was "in the pits", ORCHARD decided to stick with growing apples.

In the lawsuit filed by GEORGE in the Georgia state trial court, ORCHARD (but not FRUIT BASKET) has filed a motion for summary judgment on the grounds that the Georgia state trial court lacks personal jurisdiction over it.

You are the Georgia state trial court hearing ORCHARD's motion for summary judgment. Set forth your ruling and specify the legal grounds and facts that support your ruling.

END OF EXAM